

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA.

Plaintiff,

vs.

CR. No.:11 CR 1690 MV

**JOHN CROWE,**

Defendant.

**PROTECTIVE ORDER RELATING TO INDEPENDENT EXAMINATION  
OF SHAREAZA LE**

IT IS HEREBY ORDERED in accordance with this Court's previously entered Memorandum Opinion and Order, See *Doc. 88*, the analysis and examination of Shareaza LE in this case shall be subject to the following restrictions:

- A. This protective order shall be binding on the parties for the initial examination. Further examinations will result in the parties negotiating additional protective orders as needed.
- B. Counsel for Defendant, investigators, and experts assisting defense counsel in the above matter shall be permitted to examine the Shareaza LE software utilized in the above captioned case at a "designated law enforcement facility" that being the Homeland Security of Investigations (HIS), the Special Agent in Charge (SAC) Office located in Phoenix, Arizona. Counsel for the Defendant, investigators, and experts assisting defense counsel, will be allotted as much time as is reasonably necessary to complete



their examination of the software. *Id.* Examination of this software shall occur in a secure conference room at the SAC Office, where only those associated with this examination shall be permitted entry into this room during the examination period.

- C. Counsel for the Defendant, defense investigators, and experts assisting the defense, shall initially have the opportunity to examine ShareazaLE for one business day so as to acquire an understanding as to how the program operates.
- D. At the time of the examination at the SAC Office, Sergeant Matt Pilon with New Mexico State Police, or another designated licensed ShareazaLE operator should travel funding be unavailable for Sergeant Pilon, will be present so as to operate ShareazaLE in accordance with TLO's EULA agreement.
- E. At the time of the examination, Sergeant Pilon or other designated licensed ShareazaLE operator shall utilize a sterile government computer in which the software of ShareazaLE shall be installed. Sergeant Pilon or other designated licensed operator shall operate ShareazaLE at the direction of Counsel for the Defendant, defense investigators, and experts assisting defense in the above captioned matter. The defense shall be permitted to analyze the hard drive upon which the ShareazaLE software is installed. Any image copy of the hard drive containing ShareazaLE or the defense "test" machine shall remain in the custody of the United States. No copies

of the image copy of the hard drive containing ShareazaLE shall be provided to the defense or leave the government facility on any form of media.

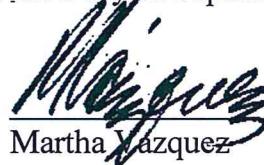
- F. Any examination and/or testing of ShareazaLE conducted by the defense shall be video recorded so as to document all testing and results of such testing.
- G. Any oral communications between opposing witnesses of the United States and defense made in conjunction with the examination of ShareazaLE shall be audio recorded so as to properly memorialize the completeness and accuracy of such conversations.
- H. William Wiltse, Security Director of TLO, an independent company who owns the proprietary rights of ShareazaLE, shall have the option to be present at this examination should he so choose.
- I. Counsel for the Defendant, investigators, and experts assisting defense counsel in this case shall be limited in examination of ShareazaLE to the same peer to peer file sharing program that was present on the Defendant's computer at the time of New Mexico State Police's download of files on March 3 and 12, 2011, that being: Frostwire version 4.21.4. If it is determined there is any other relevant file sharing programs that were utilized on the Defendant's computer at the time of the distribution in March of 2011, counsel for the Defendant, investigators, and experts assisting defense counsel in this case shall be permitted to examine ShareazaLE in conjunction with the other identified file-sharing programs utilized on the

Defendant's computer.

- J. Counsel for the Defendant, investigators, and experts assisting defense counsel in the above captioned case shall not be permitted to create or obtain copies of the Shareaza LE Software, pursuant to this Court's previously entered Memorandum Opinion and Order. *Doc. 88* at 16. Any proprietary information regarding the software seen by counsel for the Defendant, investigators, and experts assisting defense counsel "shall not be reproduced, repeated or disseminated in any manner." *Id.* All videotapes created to preserve the authenticity of the analysis shall be submitted to the court.
- K. Counsel for the Defendant, investigators, and experts assisting defense counsel are prohibited from using their Shareaza LE examination in question except to prepare for this case, impeach witnesses, refresh a witness' recollection or to test a witness' credibility (assuming such matters are otherwise permitted by applicable authority, such as the Federal Rules of Evidence).
- L. Counsel for Defendant is prohibited from setting forth any proprietary information related to Shareaza LE in a motion or other publicly-filed pleading without first presenting the matter to the Court, with notice to the United States, and obtaining the express permission of the Court to do so.
- M. Any disagreement, dispute, or issue arising during this examination shall be brought to the Court's attention, after first being unable to be resolved via agreement between the parties.

N. According to this Court's previously entered order, "violation of [this] protective order shall subject [counsel for the Defendant, investigators and/or experts assisting defense counsel] to potential sanctions by this Court." *Id.*

**IT IS HEREBY ORDERED** this 23rd day of September, 2013.



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Martha Yazquez  
UNITED STATES DISTRICT JUDGE

Submitted by:

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Charlyn E. Rees  
Assistant United States Attorney

Approved by:

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John P. Rion  
Counsel for Defendant